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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,209	02/24/2004	Ronald P. Hohmann JR.	PHO-236 CIP	8805

48745 7590 12/28/2006  
SILBER & FRIDMAN  
1037 ROUTE 46 EAST  
SUITE 207  
CLIFTON, NJ 07013

EXAMINER
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DEVOTI, PAUL D

ART UNIT	PAPER NUMBER
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3637

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/28/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/785,209	Applicant(s) HOHMANN, RONALD P.	
	Examiner Paul Devoti	Art Unit 3637	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Reference numbers 27, 58, 60, 84, 158, 160, 184, 258, 260, and 284. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422

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F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1, 3, 6-8 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6925768. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the claims is the same in both this application and US Patent 6925768.

#### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 1 (line 16) recites the phrase "substantially normal to said face". It is unclear to the examiner to what face the applicant is referring, as lines 10-11 of claim 1 recite that there are two major faces.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-6, 8, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hohmann (US 4598518) in view of Wilhelmi (US 5598680).

9. Regarding claims 1-4, Hohmann discloses a wall anchor (12) comprising a plate-like body having two major faces in the form of a mounting surface and an outer surface. The wall anchor (12) comprises legs (A, B) with portions that extend perpendicularly from the body of the anchor and have channels (32). The mounting surface of the wall anchor (12) forms a covering portion that would preclude the penetration of air and moisture. An apertured receptor portion (26, 28) has a veneer tie (18) that is threadedly disposed through the aperture (28). Hohmann does not disclose the wall anchor has at least one strengthening rib. Wilhelmi discloses a bracket assembly made of sheet metal having a plurality of strengthening ribs (23) adjacent apertures (4.1, 4.2, 4.3). It would have been obvious to one having ordinary skill in the art at the time of invention to modify Hohmann's wall anchor to include at least one strengthening rib parallel to the apertured receptor portion as taught by Wilhelmi, as it is well known in the art to add ribs to sheet metal members, as they provide reinforcement by adding strength and rigidity to the sheet metal. It would have been obvious to one having ordinary skill in the art to have the anchor constructed to meet a 100 lbf tension

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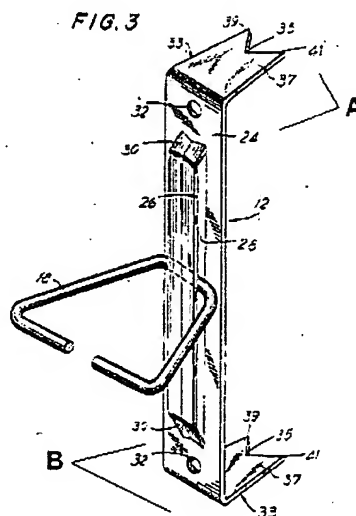
and compression rating, as this would be a matter of obvious design choice. The anchor would obviously be required to have a high strength, as it is used to hold wall members together.

10. Regarding claims 1, 3-8, 10-11, the wall construction comprising an inner and outer wythe is not positively recited and is only an intended use with the wall anchor. Therefore the wall construction is not given any patentable weight.

11. Regarding claim 5, Hohmann in view of Wilhelmi discloses everything previously mentioned, including each leg terminates in at least two points (39, 41).

12. Regarding claim 6, Hohmann in view of Wilhelmi discloses everything previously mentioned, including the legs (A, B) have a portion folded inwardly and downwardly towards the mounting surface.

13. Regarding claim 8, Hohmann in view of Wilhelmi discloses everything previously mentioned, including a sealant means (column 3, lines 51-57) for sealing between the anchor (12) and another surface.



Hohmann (US 4598518) Figure 3

14. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hohmann (US 4598518) in view of Wilhelmi (US 5598680) as applied to claims 1-2 above, and further in view of Hohmann (US 5454200).

15. Regarding claim 7, Hohmann in view of Wilhelmi discloses everything previously mentioned, including that the veneer tie (18) has an attachment portion for threading through the aperture (28) and an insertion portion opposite the attachment portion. Hohmann in view of Wilhelmi does not disclose a reinforcement wire interconnected with the veneer tie. Hohmann ('200), however, discloses a veneer anchoring system comprising a wall anchor (240) and a veneer tie (244). The veneer tie (244) is interconnected with a reinforcement wire (272). It would have been obvious to one having ordinary skill in the art at the time of invention to modify Hohmann's wall anchor, already modified by Wilhelmi, to include a reinforcement wire. A reinforcement wire would help secure a wall anchor to an inner and outer wall in a cavity wall construction.

16. Claims 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hohmann (US 4598515) in view of Wilhelmi (US 5598680) as applied to claims 1-2 above, and further in view of Liu (US 6098364).

17. Regarding claim 9, Hohmann in view of Wilhelmi discloses everything previously mentioned, but does not disclose hollow tubular members extending from the wall anchor to sheathe mounting hardware. Liu, however, discloses a wall anchor having

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outwardly extending tubular members (210) that sheathe mounting hardware. It would have been obvious to one having ordinary skill in the art at the time of invention to modify Hohmann's wall anchor, already modified by Wilhelmi, to include outwardly extending tubular members in the form of plugs, as this would enable the mounting hardware to be held by the wall anchor and securely engage a wall construction.

18. Regarding claims 10-12, see the rejection of claim 8 above. It would have been obvious to one having ordinary skill in the art to apply the sealant prior to mounting the wall anchor. The mounting surface would be flush against a wall once the anchor is mounted, and it would be very difficult to apply a sealant to that area. It would be much easier to apply a sealant before mounting the anchor.

### ***Conclusion***

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Devoti whose telephone number is 571-272-2733. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PD



12/18/06

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